



**TOWN OF HARPSWELL  
PLANNING BOARD MINUTES  
JUNE 20, 2007  
Approved July 18, 2007**

**MEMBERS PRESENT**

Dorothy Carrier, Chair  
Joanne Rogers, Vice Chair  
John Papacosma  
Kenneth Cichon  
Robin Brooks

**MEMBERS ABSENT**

**STAFF PRESENT**

Jay Chace, Planner  
Marsha Hinton, Recording Secretary

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The Town of Harpswell Planning Board meeting being duly advertised in the Times Record was called to order at 6:30 p.m. by Ms. Carrier, Chair.

Ms. Carrier, Chair, read the agenda and explained the hearing process and procedures for Planning Board meetings. Ms. Carrier reviewed the site visits held on June 18, 2007 and attended by Mr. Brook, Ms. Rogers and Mr. Chace.

**Minutes of May 16, 2007**

Mr. Papacosma pointed out a typographical error.

Ms. Rogers moved, seconded by Ms. Cichon to accept the minutes of April 18, 2007 amended as follows: "Boats which are being serviced from the on-site repair shop may be shown to prospective buyers only for the duration of time that such boat is under repair or re-fabrication." Unanimous Approval

**OLD BUSINESS**

**ITEM 1**

**06-08-01** Douglas A Johnson (James and Jennifer Talbot – owners), Subdivision Review, Shoreland/Interior District, Tax Map 14-14-1, Route 123, Harpswell.

Mr. Johnson outlined the changes to the plan for the proposed 10 lot subdivision. Mr. Johnson pointed out the letter of credit from TD Banknorth, the revised letter from the traffic engineer correcting the number of slots from six to ten, the correction to the Declaration and Covenants, the revised fire pond plan from Acorn Engineering for the dry hydrant pipe, the comments from Fire Chief regarding the access pipe running from the fire pond, the note on the site plan regarding setting of pins, and the note on the site plan stating that these were single family dwellings. Mr. Johnson addressed comments from Woodard and Curran with regard to the fire pond, the stone wall to be removed, the relocation of another stone wall, relocation of an existing driveway and replacement of culvert with a drainage swell. Mr. Johnson discussed Stormwater runoff and erosion control as well as distributing a new site plan dated June 20, 2007.

Mr. Chace handed out the letter from Acorn Engineering, the corrected deed page from the Declaration and Covenants, an e-mail dated June 15, 2007 from Woodard and Curran regarding the drainage plan, the June 19, 2007 memorandum from the Town Planner regarding the dry hydrant. Mr. Chace discussed erosion control and the performance guarantee.

Ms. Carrier, Chair, opened the floor to members of the public who wished to comment on this agenda item. None being seen, Ms. Carrier, Chair, closed the public portion of this meeting.

The Planning Board discussed stormwater runoff, pollution, parking for access to the water, and erosion control. The Board reviewed comments from the Town Planner with regard to conformance, land not suitable for development, lot markers, fire protection measures, stormwater management, traffic, utilities, landscaping, impact on ground water, the association, and documentation regarding the performance guarantee.

Mr. Johnson stated that it is the Owner's intent to have the residents drive down drop off their equipment and drive back adding that the Owner's did not want to provide for parking for water access in the subdivision.

Ms. Rogers moved, seconded by Mr. Cichon to find that the property shown on the plans titled "Plan & Profile of Goose Ledge Road", "Standard Boundary Survey & Final Subdivision Plan of Pebble Shores" and "Construction Details of Goose Ledge Road" prepared by Brian Smith Surveying Inc., for James E. and Jennifer S. Talbot and dated May 29, 2007 as revised to June 20, 2007, may be developed and used only as depicted on these approved plan, or as otherwise conditionally approved by this Board. Prior to the commencement of any construction, the applicant shall provide the Town with a performance guaranty in an amount equal to 125% of the cost of the installation of the road system, fire pond and dry hydrant system, including 12" diameter piping from the pond to the dry hydrant location. The performance guaranty or any replacement performance guaranty shall be subject to the prior approval of the Town Attorney. In addition all elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are also conditions of the approval. No changes from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board. Unanimous Approval

## **ITEM 2**

**07-05-01** Charles W. Johnson, IV, Site Plan Review, Interior District, Tax Map 13-57, 25 Edgewater Road, Harpswell.

Mr. Johnson stated that he has been working with the Town Planner with regard to his application materials.

Mr. Chace discussed, setbacks, parking areas, wetland delineations, percentage of lot coverage, subsurface wastewater disposal, management of hazardous waste, and lighting. Mr. Chace handed out documentation with regard to the exterior lighting.

The Planning Board discussed the state requirements with regard to subsurface wastewater disposal, lot size, traffic, stormwater management, erosion control, drainage, grading, ground water protection, buffering, lighting, and the standards of Site Plan Review Ordinance § 15.

Ms. Carrier, Chair, opened the floor to members of the public present who wished to comment on this agenda item. None being seen, Ms. Carrier, Chair, closed the public portion of the meeting.

Ms. Rogers moved, seconded by Mr. Papacosma to find that except as otherwise provided in Section 16.4 of the Site Plan Review Ordinance, as may be amended from time to time, the property shown on the plan drawn by Brian Smith Surveying, Inc. titled "Standard Boundary Survey & Proposed Improvement Plan of Charles W. Johnson IV & Josinete Johnson", dated May 29, 2007, may be developed and used only as depicted on this approved plan with the following amendments under 15.1 as a condition of approval the applicant should record the proposed plan with the registry of deeds and provide evidence of the same to the Planning and Code Enforcement Offices, under 15.9 the applicant will submit a drainage plan for Stormwater management to the Code Enforcement Office and the Planning Board, and under 15.10 evidence of the erosion control measures will also be submitted to the Planning and Code Enforcement Office prior to the issuance of a

permit. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions also of the approval. No changes from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board. Unanimous Approval

Mr. Cichon emphasized the need for sensitivity to the abutters with regard to the exterior lighting.

## **NEW BUSINESS**

### **ITEM 1**

**07-06-01** Harpswell Flower Shoppe (Maurice and Veronica Morgan – owners), Site Plan Review, Interior District, Tax Map 2-96, 267 Harpswell Neck Road, Harpswell.

Linda Datavs, representing Harpswell Flower Shoppe, described the change from a feed supply store to a flower shop and the efforts to clean up the site. Ms. Datavs stated that the business is a Teleflora shop and doesn't generate a great deal of walk-in business.

Mr. Chace reviewed this site's 1994 Planning Board approval.

Ms. Carrier, Chair, opened the floor to members of the public who wished to comment on this agenda item.

Mr. James Townsend, resident of Harpswell, outlined his experience with flower shops and green houses and stated that there would be no hazardous waste disposal connected with a flower shop.

Mr. Scott Lemieux, abutter, stated that as a nearby neighbor there doesn't seem to be any problems connected with parking and that the flower shop is a great addition to the area.

Mr. Richard Moseley stated that he feels the flower shop is a great addition to the business community. Mr. Moseley pointed to the appropriation of monies at town meeting for business development and that the Planning Board, Planning Office, and Code Enforcement Office should be encouraging business.

There being no further comment from the members of the public present, Ms. Carrier, Chair, closed the public portion of the meeting.

The Planning Board discussed parking.

Ms. Rogers moved, seconded by Mr. Papacosma, to find that based on the findings in the Planner's memo dated June 12, 2007 and except as otherwise provided in Section 16.4 of the Site Plan Review Ordinance, as may be amended from time to time, the property shown on the plan received by the Town on May 21, 2007 may be developed and used only as depicted on this approved plan. All elements and features of the plan and all representations made by the applicant in the record of the Planning Board proceedings are conditions of the approval. No change from the conditions of approval is permitted unless an amended plan is first submitted to and approved by the Planning Board. Unanimous Approval

### **ITEM 2**

**07-06-02** Holbrook Community Foundation, Site Plan Review – Wharf, Commercial Fishing District, Tax Map64-42, 984 Cundy's Harbor Road, Harpswell.

Mr. Chace, Town Planner, stated that the proposal was to replace an existing access wharf, ramp and float system with a new wharf, ramp, and float system. Mr. Chace pointed out Shoreland Zoning Ordinance § 15.2.1.2 requirement for a 25 foot set back from the sideline may be reduced by the Code Enforcement Officer. Mr. Chace explained that at this time the Code Enforcement Officer has not received sufficient evidence to sign off on reducing the 25 foot setback.

Mr. Joe LeBlanc, representative, introduced Mr. Bill Mangum, Holbrook Community Foundation, and Mr. John Cunningham, Attorney. Mr. LeBlanc stated that the applicant believes that the only issues remaining with the Code Enforcement Office is the question of the setback. Mr. LeBlanc described the discussions with the Code Enforcement Office with regard to what establishes the basis of the sidelines. Mr. LeBlanc stated that the applicant believes that the sidelines are inset 35 feet from the high watermark boundary from the abutter's property. Mr. LeBlanc asked that the Planning Board conditionally approve the application upon an agreement being reached between the applicant and the Code Enforcement Office.

Ms. Carrier stated that this is an important issue and expressed her concern with making it a condition of approval. Ms. Carrier said that she felt that the setback issue should be settled before it comes before the Planning Board. Ms. Carrier moved, without second to table this matter until such a time as the issue is resolved to the satisfaction of the Code Enforcement Office with regard to the setbacks.

The Planning Board discussed the various issues surrounding the setback question, the letter dated December 2, 2006, from an abutter agreeing to the placement of the proposed wharf, Shoreland Zoning Ordinance § 15.2.1.2, relocation of the wharf system, the large amount of shoreline in Harpswell, the need for consistency in the methodology used to determine setbacks, variances, ordinance authority, consultation with the Town Attorney, and riparian lines.

Mr. Chace read section 15.2.1.2 of the Harpswell Shoreland Zoning Ordinance and explained that this ordinance gives the Code Enforcement Office the authority to permit the 25 foot setback reduction. Mr. Chace stated that based on the evidence they have before them the Code Enforcement Office believes that the proposed wharf is within the 25 foot setback and they don't have a duly recorded agreement from the abutter. Mr. Chace discussed the standards used to measure this setback. Mr. Chace stated that based upon recent conversations it is his understanding that the Town has consistently based its calculations upon property lines and not riparian lines.

Mr. Cunningham, pointed out that obtaining agreement from the neighbor is not the only option for resolving the sideline issue. Mr. Cunningham stated that there is disagreement with regard to the location of the sideline adding that the applicant locates the sideline more than 25 feet from the abutter's property. Mr. Cunningham discussed the problems encountered with using the upland sideline above the high water mark and extending it to the low water mark. Mr. Cunningham pointed to Maine case law from 1832 that supports that the line is measured differently and that there is more than one possibility for determining that the application is not in violation of the setback. Mr. Cunningham requested that the Planning Board consider the other points adding the applicant is not claiming that the riparian line is something that is different from the property line. Mr. Cunningham stated that it is the applicant's opinion that the riparian line is the property line dividing the flats.

Mr. George Swallow stated that riparian lines should be used to determine setbacks for wharfs. Mr. Swallow described a wharf application he heard as a Selectman using the riparian line to give the property owner shorefront that could actually be used. Mr. Swallow explained how the riparian lines should be used to calculate the setbacks.

Mr. Cichon stated that he does not feel comfortable acting as an appeal court tonight and applying case law. Mr. Cichon added that he personally would be okay with establishing those two conditions knowing full well that they may not be met and the applicant would have to come back. Mr. Cichon stated that he can't imagine that if there is good will on both sides that that the issues can not be resolved and that he would like to think that the applicant and the Town of Harpswell could work out an agreement as to what constitutes a sideline.

Ms. Rogers expressed her agreement with Mr. Cichon's annoyance that the Town of Harpswell does not have some concrete criteria that can be used by Town staff, Town boards and Town committees to make a determination with regard to lot lines.

Mr. Papacosma stated that without a proper survey using the ground rules that have historical precedent in Maine that both parties have both feet firmly planted in the air and there is nothing much the Planning Board can do until that happens.

Ms. Rogers moved, seconded by Ms. Carrier to table the application of Holbrook Community Foundation until such time as we have sufficient information to proceed. Unanimous Approval

### **ITEM 3**

**07-06-03** Mill Stream Assoc., LLC, Subdivision Amendment Review, Shoreland/Interior Districts, Tax Map 18-192, 1757 Harpswell Neck Road, Harpswell

Town Planner, Jay Chace, explained that at the March 2007 town meeting the voters approved an ordinance amendment to allow the reduction of a back lot subdivision from 150 feet of road frontage to 50 feet of road frontage provided that the road frontage turn at a 90 degree angle to the access road creating a turn around. Mr. Chace stated that the applicant is proposing such an addition to lot three of the approved subdivision. Mr. Chace added that there will not be any increased impacts or changes to the ordinance criteria that the Board reviewed in October of 2006 when they originally approved the subdivision except for the road design.

Ms. Carrier, Chair, opened the floor to members of the public who wished to discuss this agenda item. None being seen, Ms. Carrier, Chair, closed the public portion of the meeting.

The Planning Board discussed the exact frontage for the proposal and the right-of-way.

Ms. Rogers moved, seconded by Mr. Cichon, to find that based on the findings, established as part of the record, in the Town of Harpswell Planner's memo dated June 12, 2007, I move that the application of Mill Stream Associates, LLC, to amend the Glenridge subdivision plan as recorded at the Cumberland County Registry of Deeds in Plan Book 206 Page 644 with the "Standard Boundary Survey & Amended Subdivision Plan of Glenridge", dated May 29, 2007, prepared by Brian Smith Surveying, Inc., be approved. Unanimous Approval

### **OTHER BUSINESS:**

### **JURISDICTIONAL ISSUES**

Mr. Chace informed the Planning Board and members of the public that at Town Meeting in March the voters made a change in § 10.3 of the non-conforming structures provisions in both the Basic and Shoreland Zoning Ordinances which gives the Code Office the authority to review the relocation and reconstruction of non-conforming structures subject to the Planning Board reviewing those and deciding whether the Board wishes to

take jurisdiction over the case. Mr. Chace explained that the following agenda items fall under this new ordinance provision.

Ms. Carrier, Chair, stated that the following jurisdictional agenda items are not public hearings and therefore, there would be no opportunity for public comment at this time.

**ITEM 1**

Linda & Stan Weliever, Tax Map 21-45, 2330 Harpswell Islands Road, Harpswell

The Planning Board discussed whether there would be any expansion or not and whether this is a change to the approved site plan.

Ms. Rogers moved, seconded by Mr. Brooks to accept jurisdiction of the Weliever application. Unanimous Approval

**ITEM 2**

Jim Hayes, Tax Map 22-24, 40 Abner Point Road, Bailey Island

Mr. Chace pointed out the setbacks on the sketch plan, comments from the Code Enforcement Office and that this is a post construction application.

Ms. Rogers moved, seconded by Mr. Brooks to remand this application to the Code Enforcement Office. Unanimous Approval

**ITEM 3**

Lee Theberge, Tax Map 27-37, 8 Merritt House Road, Orr's Island

Mr. Chace distributed an e-mail from Ms. Maureen Turgeon dated June 20, 2007 in support of the application. Mr. Chace described the proposal to merging two lots, remove a non-conforming structure and utilize the square footage and volume expansion numbers from the removed structure in the existing Merritt House.

The Planning Board discussed the structure to be removed, square footage calculations, the complexity of the proposal, and previous similar applications.

Ms. Carrier moved, seconded by Ms. Rogers to take jurisdiction of this application. Unanimous Approval

**ITEM 4**

Fish Net Café, Tax Map 32-54, 1624 Harpswell Islands Road, Harpswell

Mr. Chace pointed to the materials contained in the packet provided by the Code Enforcement Office changing the use from a seasonal use to year round and a letter from an abutter. Mr. Chace explained that the Code Enforcement Office has concerns with regard to the septic.

Ms. Rogers stated that she is in favor of promoting business in Harpswell but felt that it is incumbent upon business owners to come before the Planning Board or the Code Enforcement Office before doing whatever they may chose to do. Ms. Rogers pointed to the previous approval of this as a seasonal use only and it currently being operated as a year round use.

Mr. Cichon stated that there has been recurring concerns and questions that has come before the Board from time to time at these meeting about what some may perceive as a change in use at that site. Mr. Cichon pointed to comments by a number of people that site appears to be different from the original characterization.

Ms. Carrier stated that she agrees and recounted the deliberation of the Board with regard to this site. Ms. Carrier recommended that because it is a high profile issue that it come back to the Planning Board.

Ms. Rogers moved, seconded by Mr. Cichon take jurisdiction over this proposal. Unanimous Approval

#### **ITEM 5**

Bowdoin College, Tax Map 36-2, 240 Bay View Road, Harpswell

Mr. Chace stated that Bowdoin College is proposing to construct a 32 by 26 foot observation/performance platform on the same property as the Coastal Studies Program. Mr. Chace explained that the impact to the site would not significantly alter or change the Board's previous approvals.

The Planning Board discussed comments from the Code Enforcement Office, whether this was a change in use, the need for more clarity, and location of the proposed platform.

Ms. Rogers moved, seconded by Mr. Cichon to accept jurisdiction of the Bowdoin College proposal. Unanimous Approval

#### **ITEM 6**

Vegetable Corner, Tax Map 5-127, 509 Harpswell Neck Road, Harpswell

Mr. Chace discussed past concerns with the site such as impervious coverage. Mr. Chace informed the Planning Board of areas to be reseeded with grass to reduce impervious surfaces and still maintain the required amount of parking for the use.

Ms. Rogers moved, seconded by Mr. Cichon to remand jurisdiction to the Code Enforcement Office of the Vegetable Corner's request. Unanimous Approval

Mr. Cichon suggested that the parking area be arranged so that the reseeded 10 foot no-parking buffer area be barricaded in to prevent parking for purposes of traffic safety.

#### **ITEM 7**

Orr's Bailey Yacht Club, Tax Map 27-27, Orr's Island

Mr. Chace discussed the impediments preventing the construction of the approved basement and the proposal to erect a storage building. Mr. Chace read the applicant's statement of parking from their October 17, 2004 submittal materials.

The Planning Board discussed the size of the shed, coverage, vegetation to be removed, foundation if any, and parking.

Mr. Papacosma moved, seconded by Mr. Cichon to remand this request for a storage shed addition for the Orr's Bailey Yacht Club to the Code Enforcement Office. Unanimous Approval

#### **PLANNER'S UPDATES**

Mr. Chace reminded the Planning Board members of the upcoming forums and visioning sessions for the Open Space Plan (July 9, 2007) and Mitchell Field Plan (June 26, 2007 and July 15, 2007).

There being no further business before the Planning Board, Ms. Rogers moved to adjourn.

Meeting adjourned at 9:45 p.m.

Respectfully Submitted,

Marsha M. Hinton  
Planning Assistant